

**REMARKS**

Applicant has carefully reviewed the Office Action dated July 31, 2003. Claims 1, 13, 15 and 16 have been amended. Claim 7 has been cancelled.

**Claim Rejections—35 U.S.C. § 112**

Claim 15 was rejected as having insufficient antecedent basis for the claim element “apertures”. This claim has been amended to recite “at least one aperture”, which has sufficient antecedent basis. Applicant therefore submits that this rejection has been obviated.

**Claim Rejections—35 U.S.C. § 102**

Claims 1-6, 11 and 12 were rejected under 35 U.S.C. § 102(e) as being anticipated by Pugsley et al. (Pub. No. US 2003/0040761 A1). Applicant respectfully traverses the rejection.

Amended claim 1 recites “a top surface which comprises a puncturable material”. This feature, which permits the surgical clip to retain a therapeutic material releasable when the surgical clip is fastened, is not disclosed by Pugsley et al. Claims 2-6, 11 and 12 depend from claim 1 and contain additional elements. Applicant therefore submits that these claims are in condition for allowance.

Claims 1-9, 13, 15, 16 and 21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Parry (U.S. Patent No. 5,016,369). Applicant respectfully traverses the rejection.

Claim 1 recites “the first piece and the second piece are detachably connectable when the first projection passes into the reservoir”, and claims 13 and 16 recite “the first piece and the second piece can be detachably connected”. Parry does not disclose these features, and indeed discloses a contrary feature in that the tag of Parry is permanently connected. See column 3, lines 24-28:

Once the tip 7 has entered the chamber 11, the barbs 8 on the tip 7 prevent this tip 7 being withdrawn from the chamber 11 and accordingly establish a permanent connection between the male and female tag members 2 and 3.

Moreover, making the male and female tag members of Parry detachably removable would render the invention of Parry unfit for its primary purpose as a livestock tag. Applicant therefore submits that claims 1, 13 and 16, and claims 2-9, 15 and 21 which depend therefrom, are not anticipated by Parry and are in condition for allowance.

Claims 13, 16 and 18-21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Hermes (U.S. Patent No. 5,282,829). Applicant respectfully traverses the rejection.

Claims 13 and 16 have been amended to more clearly recite which clip piece has the reservoir. Claim 13, for example, requires a first piece and a second piece, the second piece having a second projection comprising a top surface, a side surface and a bottom surface, the surfaces defining a reservoir, where the first piece and the second piece can be detachably connected by extending the first projection into the reservoir. Claim 16 contains language reciting similar elements.

The only wound closure implant of Hermes disclosed which has two pieces is that of Figure 1. As the projections of 1 extend into 9, 9 corresponds to the second piece of the invention. 9 does not contain a projection having a top surface, side surface and bottom surface forming a reservoir into which a projection of 1 may be receivably connected. Hermes, therefore, does not anticipate the claimed invention.

Unlike the device of Hermes, the clips of claims 13 and 16 permit the release of therapeutic agents from a reservoir upon the fastening of tissue by the clip, permitting the release of a controlled quantity of a therapeutic agent at a specific time proximate the surgical procedure. The reservoir of the device of Hermes does not rely on displacement by a projection of the first

piece to release a therapeutic agent. The therapeutic agent, therefore, is dependent on external conditions to release any therapeutic agent. As an example, tissue proximate the device may block the open ends of reservoir 11, delaying the release.

Applicant therefore submits that claims 13 and 16 are patentable. As claims 18-21 depend from claim 16 and contain additional elements, Applicant submits that these claims are patentable as well.

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

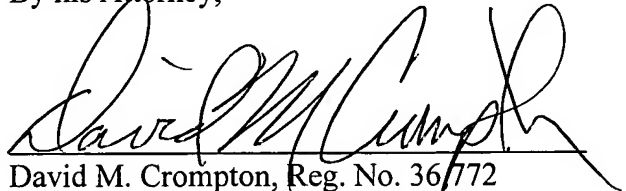
Respectfully submitted,

Jeffrey M. Wendlandt

By his Attorney,

Date: \_\_\_\_\_

10/30/03



David M. Crompton, Reg. No. 36,772  
CROMPTON, SEAGER & TUFTE, LLC  
1221 Nicollet Avenue, Suite 800  
Minneapolis, MN 55403-2420  
Telephone: (612) 677-9050  
Facsimile: (612) 359-9349